

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**CYNTHIA S. RIGGINS AND  
THOMAS K. RIGGINS**

**APPELLANTS,**

**v.  
CITY OF KANSAS CITY, MISSOURI,  
AND LORETTO REDEVELOPMENT  
CORPORATION, INC.**

**RESPONDENTS.**

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DOCKET NUMBER WD72764

DATE: August 23, 2011

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Appeal From:

Jackson County Circuit Court  
The Honorable J. Dale Youngs, Judge

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Appellate Judges:

Division Two: Thomas H. Newton, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

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Attorneys:

Frederick G. Thompson, Kansas City, MO and Dawn M. Elliott, Overland Park, KS, for appellants.

Heather A. Brown, Kansas City, MO, for respondent City of Kansas City and  
Jerry Riffel and Dameon Rivers, Kansas City, MO for respondent Loretto Redevelopment.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
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**CYNTHIA S. RIGGINS AND  
THOMAS K. RIGGINS,**

**APPELLANTS,**

**v.**

**CITY OF KANSAS CITY, MISSOURI,  
AND LORETTO REDEVELOPMENT  
CORPORATION, INC.**

**RESPONDENTS.**

No. WD72764

Jackson County

Before Division Two: Thomas H. Newton, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

This is an appeal by Cynthia S. Riggins and Thomas K. Riggins from a judgment declaring that the City of Kansas City did not act arbitrarily, unreasonably, or unlawfully in adopting an ordinance which authorized the City to enter into an amendment to a Chapter 353 contract with Loretto Redevelopment Corporation. The Riggins contend that the trial court erred: (1) in concluding that the City exercised its lawful discretion to waive Loretto's non-performance of the Chapter 353 Contract because the Contract contained an automatic termination provision; and (2) in concluding that the City did not unreasonably adopt the ordinance in light of evidence that the amount of parking required for the uses on the property was not available.

**Affirmed.**

**Division Two holds:**

(1) On appeal from a trial court's judgment reviewing a legislative decision, we examine the record to determine whether there is substantial evidence to support the legislative decision. Where a legislative decision is questioned as in excess of the legislative's body's lawful authority, we will review that question *de novo*.

(2) The Chapter 353 Contract between the City and Loretto expressly authorized the City to extend the time for performance under the Contract for excusable delays.

(3) The Contract provision which specified that Loretto's rights under the Contract would be automatically terminated with no further action required by the City if construction was not commenced or completed within a three year period following specified deadlines did not prohibit the City from extending construction deadlines for excusable delays.

(4) The City found that Loretto demonstrated "good cause" for the requested extensions of time to perform the Contract, a finding that was not preserved for appellate review.

(5) Even if Loretta failed to demonstrate excusable delay, the automatic termination provision of the Contract operated in favor of the City and could be waived by the City.

(6) Though the City did not expressly waive its right to take advantage of the automatic termination provision in the Contract, the only reasonable explanation possible for and consistent with the City's adoption of an ordinance authorizing an amendment of the Contract extending Loretto's performance deadlines is that the City waived the benefit of the automatic termination provision.

(7) A municipal corporation has the same authority to amend or change its contracts within the proper scope of its powers as an individual. The general substantive law of contracts affords parties the freedom to change their contract after entering into it, even in the face of provisions designed to hamper such freedom.

(8) The City did not exceed its lawful authority by adopting an ordinance permitting the City to enter into an amendment to a Chapter 353 Contract extending Loretto's time for performance after the original time for performance had expired.

(9) The City's parking ordinances were expressly subject to the City's authority to exercise its discretion to require less parking in mixed use developments.

(10) Ordinances are presumed valid. If a review of the record reflects substantial evidence that a municipality's exercise of discretion was reasonable and necessary, then the issue was fairly debatable, and the municipality's decision must be permitted to stand.

(11) The City's decision to approve an ordinance authorizing an amendment to a Chapter 353 Contract was not arbitrary or unreasonable where the evidence supported the conclusion that the City's exercise of its discretion to require less parking than would otherwise be required by strict application of parking ordinances was fairly debatable.

Opinion by Cynthia L. Martin, Judge

August 23, 2011

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